

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

DANIEL O'NEILL,

Plaintiff,

v.

Civ. No. 11-858 JB/GBW

LAWRENCE JARAMILLO, et al.

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION FOR DEFAULT**

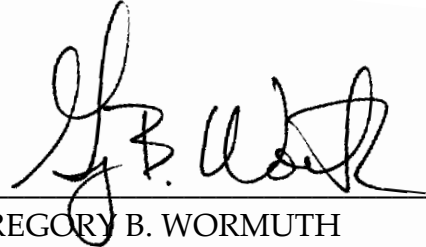
THIS MATTER is before the Court on Plaintiff's second Motion for Default Judgment. *Doc. 30*. Plaintiff requests a default because he has not received a reply to his complaint or answers to interrogatories he filed with the Court. *See id.*

Once served, a defendant has twenty-one days within which to file an answer. Fed. R. Civ. P. 12(a)(1)(A)(i). The Court may not issue a default judgment before time for answering has elapsed. *See Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir. 2003) ("[A]n entry of default against [a defendant] before it had any obligation to answer, would have been incorrect as a matter of law.").

Of the three remaining defendants, two were served on February 28, 2012. *See docs. 26, 27*. As such, the served defendants' answers are not due to be filed with the Court until March 16, 2012. The third remaining defendant, Lawrence Jaramillo, has not yet been served because he has not been located. *See doc. 28*. As such, the third

defendant has neither been apprised of this lawsuit nor given the opportunity to respond. Thus, a default judgment against any of the defendants would be improper.<sup>1</sup>

Wherefore, IT IS HEREBY ORDERED that Plaintiff's Motion for Default Judgment, (*doc. 30*), is DENIED.

A handwritten signature in black ink, appearing to read 'G.B. Wormuth', is written over a horizontal line.

GREGORY B. WORMUTH  
UNITED STATES MAGISTRATE JUDGE

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<sup>1</sup> To the extent that Plaintiff's basis for a default is that he has not received responses to his interrogatories, the Motion would also be denied because failure to answer interrogatories is not alone a basis for a default.